

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 4:04CR245-31
)	
Plaintiff,)	
)	
vs.)	Judge Peter C. Economus
)	
CHARLES M. BOERIO,)	
)	
Defendant.)	<u>ORDER</u>

This matter is before the Court upon the Supervised Release Violation Report issued by the United States Probation Office for the Northern District of Ohio ("U.S. Probation Office") on November 26, 2008.

On July 22, 2005, the Defendant, Charles Boerio, was sentenced to thirty seven (37) months imprisonment, followed by three (3) years of supervised release, for Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, a Class C felony. His supervised release commenced on June, 13, 2007.

On or about November 26, 2007, the Defendant's probation officer submitted a violation report alleging violations of the terms of supervised release:

1. Law Violation - Mr. Boerio was arrested by Boardman, Ohio Police on 11/16/2007 and charged with Robbery. The case is pending resolution in Mahoning County Court #2, Boardman, under Case No. 502007CRA01461.
2. Failure to Complete Community Corrections Center Placement - The offender

was discharged on 11/12/2007 as a program failure after he was caught trying to substitute another's urine for his during a drug screen.

3. Unauthorized Use of Drugs - Mr. Boerio admitted relapse with heroin and cocaine on or about 10/05/2007, 10/19/2007, and 10/28/2007. He admitted relapse on 11/08/2007 with heroin. A specimen collected 10/11/2007 was diluted.
4. Failure to Participate in Treatment and Testing - The offender failed to attend counseling sessions and failed to render urine samples on 11/08/2007 and 11/15/2007.

The Defendant appeared for a violation hearing before Magistrate Judge George J. Limbert on July 24, 2008, and was represented by counsel. Magistrate Judge Limbert filed a Report and Recommendation indicating that at the hearing the Defendant waived a hearing on the alleged violations and admitted to the violations. The Magistrate Judge recommended that the Court find that Defendant has violated the terms of his supervised release.

On August 5, 2008, the Court held a hearing regarding the alleged violations. The Defendant was represented by Attorney Carolyn Kucharski. The United States was represented at the hearing by Assistant United States Attorney David Toepfer. At the hearing, the Court adopted the Magistrate's report and recommendation and found that the Defendant has violated the terms of his supervised release.

The Court has considered the statutory maximum sentence of two years imprisonment pursuant to 18 U.S.C. § 3583(e)(3). The Court has also considered the advisory policy statements set forth in Chapter Seven of the United States Sentencing Guidelines prior to imposing sentence. The guideline range is 30-37 months pursuant

to U.S.S.G. § 7B1.4(a). Furthermore, the Court has considered the factors for sentencing listed in 18 U.S.C. § 3553(a) and 3583(d).

Based on the Court's review of all relevant factors, the Court hereby orders that the Defendant's supervised release is **REVOKED**, and the Defendant is committed to the custody of the Bureau of Prisons for twenty four (24) months. The sentence shall be held in abeyance until February 10, 2009, 10:30 a.m., when the Court will determine whether or not to implement the sentence imposed.

IT IS SO ORDERED.

Issued: August 5, 2008

s/ Peter C. Economus
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE